



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Henry H. Hackett & Sons

File: B-237181

Date: February 1, 1990

Edward C. Carpenter, Esq., Costello, Porter, Hill, Heisterkamp & Bushnell, for the protester. Herman A. Peguese, Col, USAF, Office of the General Counsel, Department of the Air Force, for the agency. Paul Jordan, Esq., Paul Lieberman, Esq., John Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where request for proposals provided that the lowest priced offeror would not necessarily receive award, and that the award would be based on the specific combination of technical merit and cost which is most advantageous to the government, agency properly awarded to higher-rated, higher priced offeror where agency reasonably determined that the technical advantage associated with higher-rated proposal outweighed the price premium.

2. Protest against failure to conduct cost analysis using certified cost or pricing data is denied where adequate price competition was obtained and agency did conduct price analysis which showed that proposed price is reasonable in comparison with current or recent prices for the same or substantially the same items.

DECISION

Henry H. Hackett & Sons protests the award of a contract to Peter & Rangel Construction Services, Inc., under request for proposals (RFP) No. F41689-89-R-0058, issued by the Department of the Air Force for the design and construction of a commissary at Ellsworth Air Force Base, South Dakota. Hackett alleges that the Air Force failed to follow the RFP evaluation criteria in evaluating proposals, and that Hackett should have received the award as the lowest cost, technically acceptable offeror.

We deny the protest.

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The RFP contemplated the award of a firm, fixed-price contract and provided that cost would be of equal importance to technical factors in the award of the contract. The solicitation also advised that the lowest price proposal would not necessarily receive the award. The RFP listed, in descending order of importance, the following major technical evaluation factors:

- (a) Functional and Architectural Concepts
- (b) Building Engineering Systems
- (c) Commissary Equipment
- (d) Site Design and Engineering
- (e) Design/Build Experience
- (f) Performance Schedule

The RFP further stated that "[i]n making the award of the contract, the contracting officer's objective will be to determine the specific combination of technical merit and cost which is most advantageous to the government."

The Air Force received four proposals by the June 28, 1989, closing date. As a result of the initial evaluation, requests for clarifications and notices of technical deficiencies were issued to all offerors, with offeror's responses due by August 16. The source selection evaluation team (SSET) evaluated the revised proposals and determined that all four offers were in the competitive range. Following discussions with each offeror, a request for best and final offers (BAFOs) was issued to each with an August 28 closing date. A price analysis was performed, and was completed by the agency on August 29. After the SSET reviewed the BAFOs, it recommended, and the contracting officer concurred, that award should be made to Peter & Rangel on the basis that its proposal was the most advantageous to the government. The source selection authority concurred with this award recommendation and the contract was awarded to Peter & Rangel on September 19. Hackett filed a protest in our Office on September 28, and was formally debriefed by the Air Force on October 4.

Hackett argues that the award to Peter & Rangel "is contrary to the competitive bidding process required by the applicable statutes and regulations, contrary to the published evaluation factors for award, is arbitrary and capricious,

and contrary to the best interests of the government." Specifically, Hackett challenges the reasonableness of the price/technical tradeoff made by the agency in selecting Peter & Rangel's higher priced proposal. The protester argues that since the RFP states that cost and technical factors were equal in importance, it is unreasonable to make award for this "standard construction building" to an offeror whose price is \$1.3 million more than Hackett's. Hackett contends that under these circumstances, since its offer was found technically acceptable, price must become the primary consideration and, therefore, it should receive award as the lowest price offeror. In its comments to the agency report, Hackett also alleges that the agency failed to conduct a cost analysis of the awardee's price using certified cost or pricing data as is required by Federal Acquisition Regulation (FAR) § 15.805-3(b), to determine the reasonableness of the offer.

Contrary to Hackett's assertion that price must be the determinative award consideration, the RFP specifically stated that award would not be made on the basis of lowest price. Hackett's argument in this regard is based on its contention that the RFP called for a "standard construction building." However, the solicitation provided that cost and technical factors were equal in importance, and listed "functional and architectural concepts" as the most important technical evaluation factor. Thus, it was clear from the solicitation that the commissary building design would receive major consideration, and Hackett's argument simply disregards the RFP's stated evaluation criteria.

We have consistently recognized that in a negotiated procurement, there is no requirement that award be made on the basis of the lowest price unless the RFP in fact specifies that price will be the determinative factor. McShade Gov't Contracting Servs., B-232977, Feb. 6, 1989, 89-1 CPD ¶ 118. Here, the RFP stated that the offer presenting the best combination of technical merit and price would be selected for award. The contracting officer, therefore, had the discretion to determine whether Peter & Rangel's proposal was worth the higher price. This discretion existed notwithstanding the fact that price was to be given equal consideration as an evaluation factor. Id. Agency officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. Thus, cost/technical tradeoffs may be made subject only to the test of rationality and consistency with the established evaluation factors. Id.

In this case, Hackett's BAFO was low priced at \$6,562,149, compared to Peter & Rangel's next low BAFO of \$7,868,900. However, while the Air Force evaluators determined Hackett's proposal to be generally technically acceptable, it was rated technically marginal in the functional and architectural area and in the design/build experience area. The SSET had found Hackett's architectural design unacceptable because, for example, there were two non-functional towers on the building, there was no cash counting room, nor was there a dairy alcove. Hackett argues that whether the towers are aesthetically pleasing is purely a matter of opinion, and that the cash counting room and dairy alcove were only specified as "desired," not as mandatory. Therefore, Hackett asserts that it was improper for the agency to downgrade its proposal on these bases. We disagree.

We have specifically held that an agency properly may evaluate aesthetic architectural considerations. See Bell Free Contractors, Inc., B-227576, Oct. 30, 1987, 87-2 CPD ¶ 418. Moreover, it is not unreasonable to assign a lower technical score to an offeror whose proposal offers only the bare minimum requirements and a higher technical rating to an offeror who proposes desired features as well. This is particularly appropriate where, as here, Hackett was advised in the request for clarifications and notice of technical deficiencies that these "desired" rooms were not included in its initial proposal and should be included in its revisions. See e.g., Jeffrey A. Cantor, B-234250, May 30, 1989, 89-1 CPD ¶ 517.

Hackett also received a marginal rating in the design/build experience element of the technical evaluation. Hackett alleges that it has substantial construction experience in commercial grocery stores and has performed not as a subcontractor, as the SSET suggests, but as a general contractor. However, review of Hackett's proposal reveals that, in fact, it listed no design/build experience on commercial grocery stores; rather Hackett's proposal shows that its experience in this regard consists only of work performed as a refrigeration subcontractor, mechanical subcontractor, and electrical subcontractor, and not as a prime contractor as it alleges.

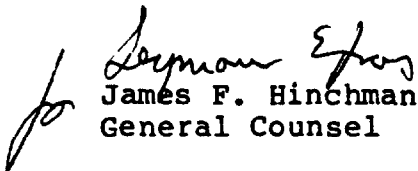
Peter & Rangel's proposal was rated as the best technical proposal of the four which were received. The proposal was rated exceptional in three areas and acceptable in the other three areas. This rating was superior to the rating received by Hackett's proposal in every area except performance schedule, the least important factor, under which both proposal were rated acceptable. In view of the

fact that Peter & Rangel's proposal was significantly higher rated than Hackett's, across the board, and particularly in the functional and architectural area, which was listed as the most important technical factor, under which Hackett's proposal was rated as marginal, we find that the agency reasonably determined, consistent with the evaluation criteria, that Peter & Rangel's proposal was more advantageous to the government.

In its comments to the agency report, Hackett for the first time alleges that the contracting officer failed to conduct a cost analysis using certified cost or pricing data to evaluate the reasonableness of Peter & Rangel's costs, as is required by FAR § 15.804-2. Our examination of the record reveals that the agency did evaluate and compare the costs of the proposals. In its "Price Negotiation Memorandum," the agency provides a detailed price analysis of Peter & Rangel's price proposal and a determination that the price was fair and reasonable. The agency based this determination on a cost comparison between all offerors, historical cost data, recent prices for a similar commissary construction, and the government estimate. Further, the agency properly determined that this proposal was exempt from the requirement for certified cost or pricing data under FAR § 15.804-3(b)(3), since there was adequate price competition. This exemption applies when, as here, "a price analysis alone clearly demonstrates that the proposed price is reasonable in comparison with current or recent prices for the same or substantially the same items purchased in comparable quantities, terms, and conditions under contracts that resulted from adequate price competition." Since the price analysis performed clearly demonstrated that Peter & Rangel's price was fair and reasonable, in comparison with the other offerors' prices, the government estimate, and another design/build contract for a substantially similar commissary, adequate price competition existed and certified cost or pricing data was not required. PHH Homequity Corp., B-237182, Oct. 31, 1989, 89-2 CPD

¶ ____.

The protest is denied.


James F. Hinchman
General Counsel